

CITY OF JOHNS CREEK
COUNCIL MEETING
February 28, 2011 @ 7:00pm

The City of Johns Creek Mayor and Council held a monthly meeting on Monday, February 28, 2011. The meeting was held at 7:00pm in the City Hall Council Chambers located at 12000 Findley Road, Suite 300 in Johns Creek, Georgia.

COUNCIL PRESENT: Post 1-Randall Johnson
Post 2-Dan McCabe
Post 3-Karen Richardson
Post 4-Ivan Figueroa
Post 5 Kelly Stewart
Post 6-Bev Miller
Mayor Mike Bodker

STAFF PRESENT: City Clerk Joan Jones
City Manager, John Kachmar
City Attorney Bill Riley

PLEDGE OF ALLEGIANCE: Led by Eagle Scouts Marshall Davis and Nicholas Royal of Troop 143 and Patrick Smith of Troop 3143.

OPENING REMARKS: Mayor Bodker welcomed everyone to the meeting. He commented on receiving many e-mails from citizens sharing opinions on items being considered by Council this evening, and said he welcomed the feedback. The Mayor mentioned attending the annual events of Johns Creek Chamber of Commerce and the Johns Creek Community Association along with several Council Members and City staff. He also attended the opening of the Atlanta Jewish Film Festival in Johns Creek and as part of Metropolitan Atlanta Mayors Association (MAMA) partnered with Gas South and Feld Entertainment to host about 800 special needs children at the circus. Mayor Bodker thanked Gas South and Feld Entertainment for their generous support for these families.

MINUTES: Council Member McCabe motioned, seconded by Council Member Figueroa to approve the February 14, 2011 Work Session Summary and Council Minutes as presented. There being no discussion, the motion passed unanimously.

MEETING AGENDA APPROVED: Council Member Figueroa motioned, seconded by Council Member McCabe to approve the meeting agenda as presented. There being no discussion, the motion passed unanimously.

City Clerk Jones read the Public Comment procedures.

PUBLIC COMMENT: Bob Frame addressed Council and spoke in opposition to any charter changes, as this charter should be considered the city's constitution. He urged Council to wait and consider feedback from the Charter Advisory Commission; David Kornbluh spoke on behalf of the Johns Creek Community Association and read a formal statement opposing changes to the Charter before a Charter Commission is convened, and said, if there are changes requiring immediate action, those should be discussed with the Community; Major Thompson commented his subdivision was built in 1983 and the streets are currently in disrepair and he urged the

Council to come up with a plan to repair these streets and supports an option to allow the residents to choose how to fund the repairs.

CONSENT AGENDA: Council Member Miller motioned, seconded by Council Member Johnson, to approve the Consent Agenda, which included, ***ACTION ITEM***—Privileged Resolutions for Eagle Scouts Marshall Davis and Nicholas Royal of Troop 143 and Patrick Smith of Troop 3143. There being no discussion, the motion carried unanimously and the Consent Agenda was approved.

ANNOUNCEMENTS: City Clerk Jones announced the following meetings:

- *Tuesday, 3/1/11 @9:00am-CVB; @5:00pm-RPAC; @7:00pm-Planning Commission*
- *Monday, 3/14/11 @5:00pm-Work Session, followed by 7:00pm-City Council Meeting*

Council Member Figueroa mentioned both he and Council Member Miller attended the Relay for Life luncheon held with Cancer Survivors from Roswell, Alpharetta and Johns Creek and noted the participation was almost double of last year. Both Council Member Miller and Figueroa encouraged and invited everyone to participate in the upcoming Johns Creek Relay of Life event the weekend of May 6th which will be held at Johns Creek High School.

REPORTS & PRESENTATIONS: Council Member Miller read the following Privileged Resolution recognizing Eagle Scout Marshall Davis of Troop 143:

The City of Johns Creek recognizes Marshall Langford Davis of Troop 143 on obtaining the rank of Eagle Scout. Whereas Eagle Scout Davis completed his community service project by constructing a paver patio and seating area for the Medlock Bridge Elementary; and Whereas this setting area is used by students during class hours and provides an area for parents to sit and watch their children play, this project not only spotlights the contributions Scouting makes to the community, but the values it instill in our youth. The Mayor and Council of the City of Johns Creek hereby recognize and applaud Eagle Scout Marshall Langford Davis and wish him well in all his future endeavors.

Council Member Richardson read the following Privileged Resolution recognizing Eagle Scout Nicholas Royal of Troop 143:

The City of Johns Creek recognizes Nicholas Andrew Royal of Troop 143 on successfully meeting all the rank requirements for Eagle. Whereas Eagle Scout Royal completed his community service project by planting 80 Juniper plants on a hill behind the Johns Creek Presbyterian Church, to help slow erosion; and Whereas with the assistance of other scouts he also installed wood railroad ties at the bottom of the hill to channel rainwater into the existing drainage system; and Whereas Eagle Scout Royal's project enhances the beauty and safety of area, it demonstrates his dedication and commitment to scouting and highlights the benefits the Scouting Program brings to our Community. The Mayor and Council of the City of Johns Creek now hereby recognize and applaud Eagle Scout Nicholas Andrew Royal and wish him well in all his future endeavors.

Council Member Stewart read the following Privileged Resolution recognizing Eagle Scout Patrick Smith of Troop 3143:

The City of Johns Creek recognizes Patrick Richard Smith of Troop 3143 on successfully completing all the rank requirements for Eagle. Whereas Eagle Scout Smith has completed his Eagle Scout project by discarding and replacing damaged benches and pulpit in the garden adjacent to Saint Andrews Catholic Church; and Whereas Eagle Scout Smith constructed four new waterproof benches and pulpit; and whereas the benches are movable and can be utilized for various activities at the church and the

pulpit allows religious teachers to teach class outdoors in nice weather, his project will provide a benefit to the church for many years to come; and Whereas the Eagle Scout Award is a distinction that will follow him throughout his life, the Mayor and Council of the City of Johns Creek recognize and applaud Eagle Scout Patrick Richard Smith and wish him well in all his future endeavors.

Mayor Bodker provided a legislative update on several bills pending in the State Legislature including those considering Sunday alcohol sales, regulating the carrying of fire arms, freezing property tax assessments and calling for the re-creation of Milton County. He encouraged everyone to stay informed.

OLD BUSINESS: No Old Business.

NEW BUSINESS:

Rezoning Case 10-009-Old Alabama Rd: A Public Hearing on Ordinance 2011-01-01 to amend the Zoning Map for Zoning Case RZ-10-009 – Dr. Parikh Naresh - 3200 Block of Old Alabama Road - O-I Conditional to O-I Conditional - Change in conditions to amend the site plan to allow a medical office (in addition to the currently allowed assisted living facility) was held. This item was tabled from the January 24th Council Meeting.

Planning and Zoning Administrator Justin Kirouac reviewed the rezoning case which requests a change of conditions to amend the site plan to allow a 6,000 sq. ft. medical office building in addition to the 30,000 assisted living facility previously approved, but not yet constructed. Explaining the use is consistent with the Newtown Character area; staff and Planning Commission recommend approval. He noted this item was previously tabled due to a deficiency in the requirement for the public participation plan which was rectified following an additional mailing by the applicant.

Mayor Bodker opened the public hearing for Ordinance 2011-01-01 to amend the Zoning Map for Zoning Case RZ-10-009 – Dr. Parikh Naresh - 3200 Block of Old Alabama Road - O-I Conditional to O-I Conditional - Change in conditions to amend the site plan to allow a medical office, in addition to the currently allowed assisted living facility and called for those wishing to speak in support of the application.

City Clerk Jones read the zoning public hearing procedures into the record.

Wendy Butler spoke on behalf of the applicant, Dr. Naresh, a physician with a medical group, requesting to construct the new medical building to add services to the current group practice. Ms. Butler indicated the property was purchased in 1997. The physician currently operates a 3000 sq. ft. office in Roswell, is relocating to the city and seeking to construct the larger building to provide lab work and x-rays to their existing volume of patients, about 25 per day. There is no plan to increase the number of patients. Ms. Butler said the property is adjacent to the Newtown Park and the applicant has met with the community; increased the number of parking spaces, and enhanced the exterior architecture. Ms. Butler indicated there were traffic issues raised and the applicant committed to making every effort to mitigate any negative traffic impact. Ms. Butler requested to save any time left for rebuttal.

Lea Taylor, representing the Johns Creek Community Association spoke in support of the applicant. She said the applicant met with the community and sufficiently addressed concerns. As there was one else wishing to speak in support, the Mayor Bodker called for opposition.

Sally Stone, a community resident for 32 years, stated she did not oppose the original zoning because it seemed unobtrusive, but opposes this project as it will increase vehicular traffic and

the buffer required is not sufficient. She explained traffic to the facility will create dangerous conditions, impede pedestrian traffic going to the park, be hazardous for students at the bus stop and voiced concern about the building description, saying it sounds like a medical facility. Ms. Stone commented she is doubtful the assisted facility will be built and offered the council a signed petition, explaining her community of 26 homes does not have an HOA, but she received 24 signatures.

Chad Smith spoke on behalf of the Chartwell subdivision in opposing this project, and questioned if this zoning approval had expired. He also informed Council the notices about this project indicated the medical office was to support the assisted living facility, which does not exist, and may never be constructed. Mr. Smith stated the Steinberg Act, (#'s 3, 4, & 6) should be considered with this request, issues regarding traffic congestion, safety concerns with accessing the park, Mt Pisgah students who run track in the area, and the right-in/right-out access to the facility.

Tom Podgorny, founder of the Montessori School of Alpharetta, said his school is the closest property east of the project, and although there are no objections to the assisted living facility the medical office would substantially increase the day-time traffic flowing into the area and would prove dangerous to his school. The “*right in - right out*” traffic flow will lead to illegal U-turns and the school property would be used as a cut-through, the school would have to close this driveway. He cited the Stenberg act, saying this project, if approved, would adversely affect the school and respectfully asked Council to deny the request. He also stated, if approved, the school may need to consider legal action to defend the safety of its children.

Eric Pretto also opposed the project and asked council to use common sense, there are multiple vacant buildings in the area. The time concluded for the opposition.

Upon rebuttal, Ms. Butler explained the patient volume will not increase; the facility will support an assisted living facility in the future. The facility will support assisted living-geriatrics patients and traffic will not be adversely affected as the operational hours for the office will be 9-4. GDOT requirements call for right in/right out, the applicant would like full access driveway but is open to other options, possibly inter-parcel connectivity. In closing, Ms. Butler explained the zoning has not expired. Mayor Bodker closed the Public Hearing

During discussion council clarified buffer and traffic flow requirements (limited site distance) with staff and discussed possible traffic flow options. Public Works Director Hildebrandt stated it would be unsafe to make left hand turns at this location. Council Member Miller inquired about other sites operated by the medical group and asked for clarification on the letter of intent, indicating the medical office is to support the assisted living facility - although the facility does not exist. There was additional discussion on site conditions during the 1995 re-zoning, which has not expired; JCCA's zoning committee process, and additional feedback from adjacent property owners. Council Member Richardson motioned, seconded by Council Member Miller, to approve Ordinance 2011-01-01 subject to Staff and Planning Commission recommendations amended as follows:

1. The site shall be developed in general accordance with the site plan received by the Department of Community Development on September 7, 2010.
2. Limit the use of the property(s) to a 100 bed personal care home and a medical office building at a maximum of 36,000 square feet.
3. Exterior elevations shall be substantially similar to the elevations submitted to the Community Development Department dated October 10, 2010 and must be constructed primarily of brick. Final elevations shall be subject to the review and approval of the Community Development Director.

4. *A 25 foot buffer adjacent to the east and west property lines, a 50 foot buffer along the rear property line.. The 10 foot improvement setback may be eliminated.*
5. Owner/Developer shall provide no more than one (1) right-in/right-out curb cut from Old Alabama Road. Entrance may be a full access drive if owner/developer can show that sight distance requirements per the City of Johns Creek standards, are met at the intersection of the drive entrance and Old Alabama Road. Entrance design and location is subject to review and approval by the Director of Public Works.
6. Owner/Developer shall provide deceleration lane at each project entrance off Old Alabama Road or as may be required by the City of Johns Creek Traffic Engineer.
7. Dedicate at no cost to the City of Johns Creek along the entire frontage on Old Alabama Road a minimum of fifty-five feet (55ft) from the centerline of the road and dedicate at no additional cost to the City of Johns Creek such additional right-of-way as may be required to provide at least 11 feet of right-of-way from back of curb or 1 foot from edge of sidewalk/trail whichever is greater, of all abutting road improvements or as necessary for the GDOT Project STP-9408(3) (P.I. No 751650), Old Alabama Road widening between Holcomb Bridge Road and Jones Bridge Road, prior to the issuance of a Land Disturbance Permit as approved by the City of Johns Creek Director of Public Works.
8. Developer shall provide Site Plan showing an overlay of the GDOT Project STP-9408(3) (P.I. No 751650) prior to the approval of the Land Disturbance Permit.

In other discussion, Council Members Miller and Richardson further supported the buffer changes saying this requirement is consistent with the city's vision for the city and Council Member Richardson expressed concern with the traffic flow and the safety issues, but deferred to staff's judgment; Council Member Johnson said he had concerns with the project as the area has changed since the original re-zoning in 1995 and he is not confident of the intent of the applicant. There being no further discussion, Mayor Bodker called the question and the motion passed 5 to 2, with Mayor Bodker, Council Members Richardson, Miller, McCabe and Figueroa supporting the motion and with Council Members Johnson and Stewart opposing the motion.

AUTHORIZE GENERAL FUND ADVANCE TO THE E-911 FUND: As this item was previously discussed at the Work Session, Council had no additional questions. Council Member McCabe motioned, seconded by Council Member Figueroa to approve Resolution 2011-02-012 to authorize the General Fund Advance of Eighty-Seven Thousand Five Hundred Dollars (\$87,500) to the E-911 Fund to Provide Funding for the Joint Public Safety and Judicial Facilities Authority for the Cities of Sandy Springs, Georgia and Johns Creek. There being no discussion, the motion passed unanimously. (***RESOLUTION 2011-02-12***)

AMEND FY 2011 BUDGET FOR E-911 FUND: As this item was previously discussed at the Work Session, Council had no additional questions. Council Member Figueroa motioned, seconded by Council Member McCabe to approve Ordinance 2011-02-04 to amend the FY 2011 Budget for the E-911 Fund of the City of Johns Creek, Georgia, Appropriating the Expenditures, Adopting the Revised Anticipated Revenues for the E-911 Fund. There being no discussion, the motion carried unanimously. (***ORDINANCE 2011-02-04***)

AUTHORIZE THE IGA WITH CITY OF PELHAM: Court Clerk Tony Day presented and informed Council there were slight modifications in the agreement from the version presented during the February 14, Work Session, these include, the cost per inmate, reduced from \$38 to \$35 and legal's clarification of the insurance requirements. Council Member Figueroa motioned, seconded by Council Member McCabe, to approve Resolution 2011-02-13 to Approve and Authorize the Intergovernmental Agreement between the City of Johns Creek and the City of Pelham for the Provision of Inmate Housing Services and to Authorize the City Manager to Provide Notice of Termination of the IGA with Irwin County for the Provision of Inmate Housing Services. There being no discussion, the motion carried unanimously. (***RESOLUTION 2011-02-13***)

PURINA D/B/A BENEFUL DOG PARK AGREEMENT: As this item was discussed at tonight's Work Session and at a previous Work Session, Council had no additional questions. Council Member McCabe motioned, seconded by Council Member Figueroa to Approve the Action Item approving the Agreement with Purina d/b/a Beneful for the Newtown Dog Park. There being no discussion, the motion carried unanimously. (***ACTION ITEM***)

CHARTER REVISIONS: City Attorney Riley presented Resolution 2011-02-14 requesting authorization to request amendments to the City Charter during the 2011 Legislative Session. He reviewed the proposed amendments, pertaining to appointments of City Manager and City Attorney, changing the budget approval time line and resolution of boundary conflicts. Council Member Miller motioned, seconded by Council Member Johnson to approve Resolution 2011-02-14 authorizing the City Attorney to Request the City of Johns Creek Georgia Legislative Delegation Introduce Certain Amendments to the City Charter for the 2011 Legislative Session.

During discussion, Council Member McCabe, Johnson, Richardson, Stewart and Miller expressed support for the proposed amendments indicating they address operational issues which are timely and essential to the efficient operation of the City. Council Member Figueroa concurred. Mayor Bodker said although he is in support in concept of the amendments, based on the feedback he has received from the community, he would favor waiting until the Charter Commission is appointed and make their recommendations. There being no further discussion, Mayor Bodker called the question and the motioned passed 6 to 1 with Council Members Miller, Johnson, McCabe, Richardson, Figueroa, and Stewart voting in favor of the motion and Mayor Bodker opposing the motion. (***RESOLUTION 2011-02-14***)

OTHER BUSINESS: None

PUBLIC COMMENT: Mark Endres commented on Council's decision on tonight's zoning case, saying the required buffers will make it difficult for the project to succeed as this will reduce the buildable space, taking away the property owners rights. He added this city is not business friendly when restrictions are too hard, and said council should talk to the property owners to see if the restrictions placed on them are too prohibitive.

MAYOR'S COMMENT: The Mayor thanked everyone for attending the meeting and wished them a good evening.

EXECUTIVE SESSION: No Executive Session.

There being no further business, Council Member Miller made a motion to adjourn the meeting, Council Member McCabe seconded this motion. The motion carried unanimously and the meeting was adjourned.

Approved:

Attest:

Michael E. Bodker, Mayor

Joan C. Jones, City Clerk